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Iowa e-Health: DRAFT policy development for 2011 Legislative Session

AN ACT

relating to health information technology, a statewide health information exchange and
the creation of
Iowa e-Health

1. Statement of intent and findings

- A.** It is the intent of the general assembly to use health information technology as a catalyst to achieve a healthier Iowa through the electronic sharing of health information. A health information exchange (HIE) involves sharing health information across the boundaries of individual practice and institutional health settings and with consumers.

The result is a public good that will contribute to improved:

- (1) Clinical outcomes and patient safety;
- (2) Population health;
- (3) Access to and quality of health care;
- (4) Efficiency in health care delivery.

- B.** The general assembly finds the following:

- (1) Health information technology allows for comprehensive management of health information and its secure electronic exchange between providers, public health, payers, and consumers. Broad use of health information technology should improve health care quality and the overall health of the population, increase the efficiencies in administrative health care, reduce unnecessary health care costs and help prevent medical errors.
- (2) Health information technology provides a mechanism to transform the delivery of health and medical care in Iowa and across the nation. Technology used to support health-related functions is broadly known as health information technology (HIT). Electronic health records (EHR) are used to collect and store relevant patient health information. EHRs serve as a means to bring evidence-based knowledge resources and patient

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information to the point of care to support better decision making and more efficient care processes.

2. Definitions

“Authorized” means having met the requirements as a participant for access to the health information exchange.

“Board” means the board of directors of Iowa e-Health.

“Collaborative” means the cooperative effort among state government agencies, private entities and other stakeholders to develop, administer and sustain the health information exchange.

“Consumers” means people who acquire and use goods and services for personal need.

“Continuity of care document” or “CCD” means a summary of a patient’s health information for each visit to a health care provider to be delivered through the health information exchange.

“Department” means the Iowa department of public health.

“Deputy director” means the deputy director of the Iowa department of public health.

“Director” means the director of the Iowa department of public health.

“EHR” means electronic health record.

“Exchange” means the authorized electronic sharing of health information between providers, public health, payers and consumers utilizing the health information exchange and services.

“Executive director” means the executive director of the office of health information technology of the Iowa department of public health.

“Health information” means any information, in any form or medium, that is created or received by a provider, payer, consumer, local board of health or the department, which relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

“HIE” means the exclusive statewide electronic health information exchange.

“HIPAA” means the health insurance portability and accountability act of 1996,

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including amendments thereto and regulations promulgated thereunder.

“HIT” means health information technology.

“Infrastructure” means technology (architecture, hardware, software, networks, terminology and standards), policies and procedures governing the electronic exchange of health information.

“Iowa e-health” means the collaboration between the department, other public and private stakeholders to establish, operate and sustain an exclusive statewide health information exchange.

“Iowa medicaid enterprise” means the Iowa medicaid enterprise that is a state-federal funded program administered by the State of Iowa, department of human services.

“IT” means information technology.

“Local boards of health” means a county or district board of health.

“Office” means the office of health information technology of the Iowa department of public health.

“Participant” means an authorized provider, payer, patient, health care organization, local board of health or the department that has agreed to authorize, submit, access and/or disclose health information through the health information exchange in accordance with this chapter and all applicable laws, rules, agreements, policies and procedures.

“Participation and data sharing agreement” means the agreement outlining the terms of access and use for participation in the health information exchange.

“Patient” means a person who has received or is receiving health services from a provider. In different settings, patients may be referred to as members, clients, or consumers.

“Payer” means, but is not limited to, an insurance company, self-insured employer, government program, individual or other purchaser, that makes payments for health services.

“Protected health information” means information created or received by a provider or payer about a person’s health status or provision of health care to a person that is individually identifiable information, including demographic information, related to the past, present, or future health or condition of a person or the past, present or future payment for such health care.

“Provider” means a person, hospital, physician clinic, pharmacy, laboratory or

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other health service provider that is licensed, certified, or otherwise authorized or permitted by law to administer health care in the ordinary course of business or in the practice of a profession, or any other person or organization that furnishes, bills or is paid for health care in the normal course of business.

“Purchaser” means any individual, employer or organization that purchases health insurance and includes intermediaries.

“Services” means the health information to be exchanged via the health information exchange; education and outreach to support connection and access to and use of the health information exchange; and all other activities related to the electronic exchange of health information.

“Vendor” means a person or organization that provides or proposes to provide goods or services to the department pursuant to a contract, but does not include an employee of the state, a retailer, or a state agency or instrumentality.

3. Iowa e-health established

- A.** This chapter establishes Iowa e-health as a public-private, multi-stakeholder collaborative whose purpose is to develop, administer and sustain the exclusive statewide HIE to improve the quality, safety, and efficiency of health care available to the population.
- B.** Iowa e-health is hereby designated to manage and operate the HIE. Nothing in this act shall impede or preclude the formation and operation of regional, population specific and local health information exchanges or their participation in the HIE.
- C.** Iowa e-health services will facilitate the exchange of health information for prevention and treatment purposes to help providers make the best health care decisions for patients and provide patients with continuity of care regardless of the provider the patient visits. An example of a service is the transfer of a clinical summary document or medication history about a patient from a primary care provider to a specialist to which the patient is referred.

4. Principles and goals of Iowa e-health

- A. The guiding principles of Iowa e-health are to:**
 - (1) Engage in a collaborative, public-private, multi-stakeholder effort including providers, payers, purchasers, government, educational institutions, and consumers;
 - (2) Create a sustainable HIE which makes information available

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when and where it is needed;

- (3) Ensure the HIE incorporates provider priorities and appropriate participant education;
- (4) Instill confidence in consumers that their health information is secure, private and accessed appropriately;
- (5) Build on smart practices and align with federal standards to ensure interoperability within and beyond the state.

B. The goals of Iowa e-health are to:

- (1) Build awareness and trust of HIT through communication and outreach to providers and consumers;
- (2) Safeguard privacy and security of health information shared electronically between participants through the HIE so that the health information is secure, private and accessed only by authorized individuals and entities;
- (3) Promote statewide deployment and use of EHRs;
- (4) Enable the electronic exchange of health information;
- (5) Advance coordination of activities across state and federal government;
- (6) Establish a governance model for the HIE;
- (7) Establish sustainable business and technical operations for the HIE;
- (8) Secure financial resources to develop and sustain the HIE;
- (9) Monitor and evaluate HIT progress and outcomes.

5. Iowa e-health domains. Iowa e-health includes five domains:

- A. Governance.** Iowa e-health shall be governed by a board of directors whose members will represent stakeholders such as provider organizations and associations, providers, payers, purchasers, government, business, and consumers. Iowa e-health will be supported by the department's office of HIT. The board will set direction, goals and policies for Iowa e-health and provide oversight of the business and technical operations of the HIE and services.

- B. Business and technical operations.** The department's office of HIT will perform day-to-day operations to support and advance Iowa e-health, the HIE and services.
- C. Finance.** Iowa e-health will identify and manage financial resources to achieve short and long-term sustainability of the HIE, with the goal that the HIE is financed by all who benefit from the improved quality, efficiency, and other benefits that result from the use of HIT.
- D. Technical infrastructure.** Iowa e-health will implement and manage the core infrastructure and standards to enable the safe and secure delivery of health information to providers and consumers through the HIE.
- E. Legal and policy.** Iowa e-health will establish privacy and security policies and participation and data sharing agreements to protect consumers and enforce rules for utilization of the HIE.

6. Governance

- A. Board.** Iowa e-health will be governed by a board of directors, which shall deploy, administer and sustain the business of the collaborative. The board of directors shall be comprised of no more than nineteen voting members. Board members shall be residents of the state of Iowa. Board member appointments shall not be subject to the strict requirements of sections 69.16 and 69.16A; however, the appointing authorities shall give consideration to gender balance and geographic representation in the appointment process.
 - (1) **Three** members shall be appointed by the governor subject to confirmation by the senate. One member shall represent consumers, one member shall represent small business interests and one member shall represent large business interests.
 - (2) **Four** members, each of whom is the chief information officer, or designee, one each from the four largest health care systems in the state.
 - (3) **One** member who represents rural hospitals and is a member of the Iowa hospital association, appointed by the Iowa hospital association.
 - (4) **Two** members representative of two different private health insurance carriers, appointed by the federation of Iowa insurers, one of which has the largest health market share in Iowa.

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- (5) **One** member representing the department who is the deputy director.
- (6) **One** member representing the Iowa medicaid enterprise who is the director or designee.
- (7) **One** member who is a licensed practicing physician in an office or clinic setting, appointed by the Iowa medical society.
- (8) **One** member who is a licensed practicing physician in an office or clinic setting, appointed by the Iowa osteopathic medical association.
- (9) **One** member who is a licensed practicing nurse in an office or clinic setting, appointed by the Iowa nurses association.
- (10) **One** member who is a licensed pharmacist practicing in a pharmacy setting, appointed by the Iowa pharmacy association.
- (11) **One** member representing the Iowa collaborative safety net provider network created in section 135.153.
- (12) **One** member representing substance abuse and mental health programs, appointed by the Iowa behavioral health association.
- (13) **One** at-large board member seat, which may be appointed by and at the sole discretion of the board.

B. Restrictions on board membership. A person may not serve on the board, in any capacity, if the person is required to register as a lobbyist under Iowa Code chapter 68B.36 because of the person's activities for compensation on behalf of a profession or an entity that is engaged in providing health care, reviewing or analyzing health care, paying for health care services or procedures, or providing HIT or HIE services.

C. Terms of board members

- (1) The six board member positions in section 6.A, subsections 2, 5, and 6 are by their nature not subject to term limits.
- (2) All other board member positions shall initially have staggered terms and term limits as follows:
 - (a) The three Board member positions appointed by the governor (section 6.A.1), shall have an initial term of two

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years, after which the positions shall have four-year terms, subject to the following:

- (i) The terms shall begin and end as provided in chapter 69.19.
 - (ii) Board members appointed by the governor when the senate is not in session shall serve only until the end of the next regular session of the general assembly, unless and until confirmed by the senate.
- (b) The one board member position appointed by the Iowa pharmacy association (6.A.10), and the one at-large board position (6.A.13), if appointed by the board, shall have initial terms of two years, after which the positions shall have four-year terms.
- (c) The one rural hospital board member position appointed by the Iowa hospital association (6.A.3), the one board member position appointed by the Iowa medical society (6.A.7), the one board member position appointed by the Iowa osteopathic medical association (6.A.8), the one board member position appointed by the Iowa nurses' association (6.A.9), the one board member position appointed by the Iowa collaborative safety net provider network (6.A.11), and the one board member position appointed by the Iowa behavioral health association (6.A.12) shall have initial terms of four years, after which the positions shall have four-year terms.
- (d) The two private health insurance company board positions appointed by the federation of Iowa insurers as described in section 6.A.4 shall initially have a term of six years, after which the positions shall have four-year terms.
- (3) Board members initially appointed as provided in section 6.C.2 may serve one additional four-year term, with the exception of those board members initially appointed to a two-year term, which may serve two consecutive four-year terms following the initial two-year term.
- (4) In no event may a Board member serve more than two consecutive four-year terms except as specified in 6.C.1.
- (5) At the end of any term, a member of the board may continue to

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serve until the appointing authority names a successor.

- (6) Board vacancies shall be filled for the remainder of the term in the same manner as the original appointments. No vacancy in the membership of the board shall impair the right of the members to exercise all the powers and perform all the duties of the board.
- (7) A board member may be removed by the board for cause including, without limitation, malfeasance in office, failure to attend board meetings, misconduct and violation of ethical rules and standards. Non-attendance of board members appointed by the governor shall be governed by the provisions of section 69.15. Other board members may be removed by vote of the board if, based on the criteria as provided in sections 69.15.1(a) and(b), they would be deemed to have submitted a resignation from the board.
- (8) The members shall elect from their membership a chairperson. The deputy director shall serve as vice chairperson.

D. Board meetings

- (1) Meetings of the board shall be governed by the provisions of chapter 21.
- (2) The board shall meet upon the call of the chairperson or the vice chairperson. Notice of the time and place of each board meeting shall be given to each member. The board shall keep accurate and complete records of all its meetings.
- (3) A simple majority shall constitute a quorum to enable the transaction of any business and for the exercise of any power or function of the board. Action may be taken and motions and resolutions adopted by the affirmative vote of a majority of members attending the meeting whether in person, by telephone, web conference or other means. A board member may not vote by proxy or through a delegate.
- (4) All Board members shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their official duties as members in accordance with state rules and guidelines. No person who serves as a member of the board shall by reason of such membership be eligible for membership in the Iowa public employees' retirement system or for service credit for any public retirement system.

E. Powers and duties of the board. The board has the following powers and duties, together with all powers incidental or necessary to accomplish

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the purposes of this act. The board may exercise its powers, duties, and functions as prescribed by law, independently of the director except in matters involving: violation or risk of violation of applicable state or federal laws and regulations; overriding public policy or public safety concerns; or compliance with the office of national coordinator of HIT state health information exchange cooperative agreement program or any other cooperative agreement programs or grants supporting Iowa e-health.

- (1) The board shall have the authority to:
 - (a) Participate in the selection of the executive director and assist in the development of performance standards and evaluations of the executive director;
 - (b) Prioritize among HIE services according to the needs of the population of this state;
 - (c) Establish by rule any fees, charges, costs and expenses that may be collected to operate and sustain the HIE and services;
 - (d) Oversee the handling and accounting of assets and moneys received for or generated by the HIE;
 - (e) Establish and disband committees and workgroups as needed;
 - (f) Approve the following, as proposed by the department:
 - i. Strategic, operational and financial sustainability plans for Iowa e-health, the HIE and services;
 - ii. Standards, requirements, policies and procedures for access, use, secondary use, and privacy and security of health information exchanged through the HIE, consistent with applicable federal and state standards and laws;
 - iii. Policies and procedures for administering the infrastructure, technology, and associated professional services necessary for the business and technical operation of the HIE and services;
 - iv. Policies and procedures for evaluation of the HIE and services;

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- v. Mechanism for periodic review and update of policies and procedures;
 - vi. Annual budget and fiscal report for the operations of the HIE and annual report for Iowa e-health and services;
 - vii. Major purchases of goods and services;
 - (i) Adopt administrative rules pursuant to chapter 17A to implement this chapter and relating to the management and operation of the HIE and services;
 - (j) Perform any and all other activities in furtherance of its purpose.
- (2) The board shall establish by rule procedures for monitoring and enforcement of, and sanctions for actions including, but not limited to: non-compliance with HIE standards, requirements, policies, and procedures; violation of applicable laws; and failure to act in the best interests of consumers or participants of the HIE. The board shall have the power to suspend, limit, or terminate the right of a participant to utilize the HIE for such reasons and shall establish by rule a process by which a participant can appeal the board's action.
 - (3) The board shall have all remedies allowed by law to address any violation of the terms of the participation and data sharing agreement.

F. Ethics and conflicts of interest. Board members are subject to chapter 68B, the government ethics and lobbying act; the rules adopted by the Iowa ethics and campaign disclosure board; and the ethics rules and requirements that apply to the executive branch of state government. Board members shall not have any direct or indirect interest in an undertaking that puts their personal or business interests in conflict with those of Iowa e-health, including but not limited to an interest in a procurement contract, or that may create the appearance of impropriety.

G. Advisory council

- (1) The board shall have an advisory council. The purpose of the council is to provide an additional mechanism for obtaining broader stakeholder advice and input regarding HIT, the HIE and services.
- (2) The members of the council shall be appointed by the board for two-year staggered terms and shall initially represent the following

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constituencies:

- (a) Member of the state board of health
 - (b) Informaticist
 - (c) Academics
 - (d) Iowa medicare quality improvement organization
 - (e) State chief information officer
 - (f) Private telecommunications industry
 - (g) Iowa collaborative safety net provider network
 - (h) Department of human services
 - (i) Des Moines university
 - (j) Iowa health care collaborative
 - (k) Veterans affairs
 - (l) Consumer
 - (m) Home health care
 - (n) Long-term care
 - (o) State hygienic laboratory
- (3) The board shall have the discretion to change by rule the number of members and the composition of the advisory council to accommodate changes in stakeholder interests and the evolution of HIT, the HIE and services.
- (4) Advisory council members shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their official duties as members in accordance with state rules and guidelines.

7. **Business and technical operations**

- A. Office of HIT.** The department's office of HIT shall be responsible for the day-to-day business and operations of Iowa e-health, the HIE and services. The office shall be under the overall direction of the director and under the supervision of the deputy director.
- B. Executive director.** The executive director shall manage the planning and implementation of Iowa e-Health, the HIE and services, and provide high-level coordination across public and private sector stakeholders. The executive director shall report to the deputy director. The executive director shall serve as Iowa's HIT coordinator and primary point of contact to the Office of the National Coordinator for HIT, other federal and state agencies involved in HIT, and state HIT coordinators from other states.

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- C. Powers and duties of the department.** The department has the following powers and duties, together with all powers incidental or necessary to accomplish the purposes of this act.
- (1) The department shall develop, implement and enforce the following, as approved by the board:
 - (a) Strategic, operational and financial sustainability plans for the HIE, Iowa e-health and services;
 - (b) Standards, requirements, policies and procedures for access, use, secondary use, and privacy and security of health information exchanged through the HIE, consistent with applicable federal and state standards and laws;
 - (c) Policies and procedures for monitoring participant usage of the HIE and services; enforcing non-compliance with HIE standards, requirements, policies, procedures and violations of applicable law; and imposing sanctions;
 - (d) Policies and procedures for administering the infrastructure, technology and associated professional services required for operation of the HIE and services;
 - (e) Policies and procedures for evaluation of the HIE and services;
 - (f) A mechanism for periodic review and update of policies and procedures;
 - (g) Annual budget and fiscal report for the business and technical operations of the HIE and annual report for Iowa e-health, the HIE and services;
 - (2) The department shall also perform the following duties:
 - (a) Convene and facilitate board, advisory council, workgroup, committee and other stakeholder meetings;
 - (b) Provide technical and operational assistance for planning and implementing Iowa e-health activities, the HIE and services;
 - (c) Provide human resource, budgeting, project and activity coordination and related management functions to Iowa e-health, the HIE and services;

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- (d) Develop educational materials and educate the general public on the benefits of EHRs, the HIE, and the safeguards available to prevent unauthorized disclosure of health information;
- (e) Enter into participation and data sharing agreements with participants of the HIE;
- (f) Administer and enforce the collection of fees, charges, costs and expenses for the HIE and services ;
- (g) Record receipts, approval of payments, and file required financial reports;
- (h) Apply for, acquire by gift or purchase, and hold, dispense or dispose of funds and real or personal property from any person, governmental agency or organization in the exercise of its powers and performance of its duties as set forth in this act;
- (i) Administer grant funds in accordance with the terms of the grant and all applicable state and federal laws, rules and regulations;
- (j) Select and contract with vendors in compliance with applicable state and federal procurement laws and regulations;
- (k) Coordinate with other HIT and health information exchange programs and activities;
- (l) Work to align interstate and intrastate interoperability and standards in accordance with national health information exchange standards;
- (m) Execute all instruments necessary or incidental to the performance of its duties and the execution of its powers.

D. Office personnel

- (1) The executive director and all other employees of the office, shall be employed, classified, and compensated in accordance with chapter 8A, subchapter IV, and chapter 20.
- (2) Subject to approval of the board, the director shall have the sole power to determine the number of full-time and part-time equivalent positions necessary to carry out the provisions of this

chapter.

- (3) An employee of the office shall not have a financial interest in any vendor doing business or proposing to do business with the collaborative.

8. Finance—Iowa e-health fund

- A.** The Iowa e-health fund is created as a special fund within the state treasury under the control of the board. The state treasurer shall be ex-officio custodian of the fund. Fees collected or revenues arising from the operation and administration of the HIE and services including, without limitation, fees and charges for participants of the HIE, donations, gifts, interest, or other moneys, shall be deposited into the fund and retained by the board. It is the intent of the legislature that the funds generated from fees collected and revenues generated from the HIE be used to establish, operate and sustain the HIE and services.
- B.** The department is authorized to spend moneys in the fund on activities and operations suitable to the performance of its duties on behalf of Iowa e-health and the board's duties as authorized by this act, subject to board approval. Disbursements may be made from the fund for purposes related to the administration, management, operations, functions, activities and sustainability of the HIE and services.
- C.** Notwithstanding chapter 8.33, any unexpended balances in the fund at the end of each fiscal year shall be retained in the fund and shall not be transferred to the general fund of the state.
- D.** The moneys in the fund shall be subject to financial and compliance audits by the auditor of state.
- E.** The general assembly may appropriate moneys to the department on behalf of Iowa e-health for the HIE and services.

9. Technical infrastructure

- A.** The HIE shall provide a mechanism to facilitate and support the secure electronic exchange of health information between participants. The HIE will not function as a central repository of all health information.
- B.** The HIE shall provide a mechanism for participants without an EHR system to access health information from the HIE.

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- C. The technical infrastructure of the HIE will be designed to facilitate the secure electronic exchange of health information using functions such as, but not limited to:
- (1) A master patient index, in the absence of a single, standardized patient identifier, to exchange secure health information among participants;
 - (2) A record locator service to locate and exchange secure health information among participants;
 - (3) Authorization, authentication, access, and auditing processes for security controls to protect the privacy of consumers and participants and the confidentiality of health information by limiting access to the HIE and health information to participants whose identity has been authenticated, whose access to health information is limited by their role (e.g., provider, payer), and whose access to health information is recorded through an audit trail.
 - (4) Electronic transmission procedures and software necessary to facilitate the electronic exchange of various types of health information through the HIE; and
 - (5) Telecommunications through coordination of public and private networks to provide the backbone infrastructure to connect participants exchanging health information. The networks may include, but are not limited to, the state-owned communications network, other fiber optic networks and private telecommunications service providers.
- D. **Ownership of infrastructure.** The state shall own or possess the rights to use all processes and software developed, and hardware installed, designed or purchased for the HIE, and shall permit participants to use the HIE and services in accordance with the standards, policies, procedures, rules and regulations approved by the board, and the terms of the participation and data sharing agreement.

10. Legal and policy

- A. **Privacy and security of health information.** Upon approval from the board the department shall establish appropriate security standards, policies and procedures to protect the transmission and receipt of individually identifiable health information exchanged through the HIE, which shall:
- (1) Include authorization controls, including the responsibility to authorize, maintain, and terminate a participant's use of the HIE;

- (2) Require authentication controls to verify the identify and role of the participant using the HIE;
- (3) Include role-based access controls to restrict functionality and information available through the HIE;
- (4) Include a secure and traceable electronic audit system to document and monitor the sender and the recipient of health information exchanged through the HIE;
- (5) Require standard participation and data sharing agreements which define the minimum privacy and security obligations of all participants using the HIE and services;
- (6) Include controls over access to and the collection, organization, and maintenance of records and data for purposes of research or population health that protect the confidentiality of consumers who are the subject of the health information.

B. Individual choice to participate. Patients will have the opportunity to opt out of having their health information exchanged through the HIE. The board shall provide by a rule the means and process by which patients can opt out of the HIE.

- (1) Unless otherwise authorized by law (including, without limitation, chapters 135, 139A, 141A, 235A and 235B), this section, or provided by rule, a patient's decision to opt out means that none of the patient's health information can be exchanged through the HIE. If a patient does not opt out, the patient's health information can be exchanged through the HIE except as follows:
 - (a) If health information associated with a patient visit with a provider is protected by Iowa law more restrictive than HIPAA, a patient shall have the right to opt out of sharing health information through the HIE from such visit.
 - (b) With the consent of the patient a provider may limit health information associated with a patient visit from being shared through the HIE if such limitation is reasonably determined by the provider, in consultation with the patient, to be in the best interest of the patient.
- (2) A patient who opts out of participating in the HIE may later decide to have health information shared through the HIE. A patient who is participating in the HIE can later decide to opt out of participation in the HIE.

- (3) The department shall develop and distribute educational tools and information for consumers, patients, and providers to inform them about the HIE; the safeguards available to prevent unauthorized disclosure of health information; a patient's right to opt out of the HIE; and the effects of a decision to opt out.

C. Limitations on disclosure of health information

- (1) No participant of the HIE may release or use protected health information exchanged through the HIE for purposes unrelated to prevention, treatment, payment, or healthcare operations unless otherwise authorized or required by law. Participants shall limit the use and disclosure of protected health information to the minimum amount required to accomplish the intended purpose of the use or request, in compliance with federal law. Use or distribution of the information for a marketing purpose, as defined by HIPAA, is strictly prohibited.
- (2) The department and all persons and organizations using the HIE shall be individually responsible for following breach notification policies as provided by HIPAA.
- (3) No provider shall be compelled by subpoena, court order or other process of law to access the health information through the HIE in order to gather records or information not created by the provider.

D. Emergency access and use. If a patient has opted out of the HIE, the patient's health information can be released to a provider through the HIE only if:

- (1) The patient is unable to provide consent due to incapacitation;
- (2) The requesting provider believes, in good faith, that the information is necessary to prevent imminent serious injury to the patient. Imminent serious injury includes but is not limited to death; injury or disease that creates a substantial risk of death; or injury or disease that causes protracted loss or impairment of any organ or body system; and
- (3) Such information cannot otherwise be readily obtained.

The department shall provide by rule for the reporting of emergency access and use by a provider.

E. Ownership of health information. A patient owns his or her health information. All participants exchanging health information and data

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through the HIE shall retain a limited property right in that information or data, but shall grant to participants of the HIE a nonexclusive license to retrieve and use that information or data in accordance with applicable state and federal laws, and the policies, procedures and rules established by the board.

F. Openness and transparency. The department shall establish by rule the procedures for a patient who is the subject of health information to:

- (1) Receive notice of a violation of the confidentiality provisions required under this section;
- (2) Upon request to the department, view an audit report created under this section for the purpose of monitoring access to the patient's records.

G. Limitation of liability/immunity. Any provider who relies in good faith upon any health information provided through the HIE in treatment of a patient shall be immune from criminal or civil liability arising from any damages caused by such good faith reliance; provided, however, that this immunity shall not apply to acts or omissions constituting gross negligence, recklessness or intentional misconduct. A participant that has disclosed health information through the HIE in compliance with applicable law and the standards, requirements, policies, procedures and agreements of the HIE shall not be subject to criminal or civil liability for the use or disclosure of the health information by another participant.

H. Reconciliation with other laws

- (1) Notwithstanding chapter 22, the following records shall be kept confidential, unless otherwise ordered by a court, with the patient's consent, or by a person duly authorized to release such information: the protected health information contained in, stored in, submitted to, transferred or exchanged by, or released from the HIE; any protected health information in the possession of Iowa e-health or the department due to its administration of the HIE.
- (2) Subject to the provisions of section 10.B of this chapter, when using the HIE for the purposes of patient treatment, a provider is exempt from any other Iowa law that is more restrictive than HIPAA that would otherwise prevent or hinder the exchange of patient information by the patient's providers.

11. Iowa e-health services

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Iowa e-health will facilitate services through the HIE or through other marketplace mechanisms to improve the quality, safety, and efficiency of health care available to the population. This includes but is not limited to:

- (1) Patient summary records such as continuity of care documents;
- (2) A provider directory and provider messaging;
- (3) Clinical orders and results;
- (4) Public health reporting such as electronic reporting to the statewide immunization registry and reportable diseases;
- (5) Medication history.

12. Governance review and transition

A. The Iowa e-health governance structure as provided in this act shall continue during the term of the state health information exchange cooperative agreement with the office of national coordinator for HIT to address the development of policies and procedures; dissemination of interoperability standards; the initiation, testing and operation of the HIE infrastructure; and the evolution of HIE services to improve patient care for the population. During the final year of the term of the cooperative agreement, the board and the department shall review the Iowa e-health governance structure, operations of the HIE and the business and sustainability plan to determine if the Iowa e-health should remain government led or if the operations of the HIE and services should be transferred to:

- (1) A public authority or similar body with broad stakeholder representation on its governing board; or
- (2) A not-for-profit entity with broad stakeholder representation on its governing board.

B. If a change in governance is desired, Iowa e-health shall develop a transition plan to transfer the responsibilities for:

- (1) Governance;
- (2) Finance;
- (3) Technical infrastructure;

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- (4) Legal and policy;
- (5) Business and technical operations.

13. Administrative rules

The board shall adopt rules pursuant to chapter 17A to implement this chapter which shall include but not be limited to rules regarding the following:

- (1) Establishment of fees, charges, costs and expenses that may be collected to operate and sustain the HIE and services (Section 6.E. 1. c);
- (2) Management and operation of the HIE and services (6.E.1.i);
- (3) Monitoring compliance with HIE policies and procedures; enforcement procedures and sanctions; appeal process (6.E.2);
- (4) Advisory council membership (6.G.3);
- (5) Opt-out procedures (10.B);
- (6) Reporting of emergency access and use (10.D);
- (7) Breach notification and audit reports (10.E).

14. Effective date. This act, being deemed of immediate importance, shall take effect upon enactment; provided, however, that the executive committee and advisory council created pursuant to chapter 135.156 and the department shall continue to exercise the authority and duties given to them under that chapter until such time as all board members have been appointed as provided in section 6.B of this chapter.

15. Repeal of previous legislation. Chapter 135, sections 135.154 through 135.156, regarding the Iowa health information technology system are repealed as of the date all board members have been appointed as provided in section 6.B of this chapter.